

**STAFF REPORT**

Meeting Date: February 19, 2003

**TO:** LAFCO Commissioners  
**FROM:** Everett Millais, Executive Officer  
**SUBJECT:** Annexation of Unincorporated Islands by Cities

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**RECOMMENDATION:**

Receive presentation and provide direction to staff about possible future budget and/or policy considerations relating to the annexation of unincorporated island areas by cities.

**DISCUSSION:**

**Background:**

Prior to the creation of Local Agency Formation Commissions by the legislature in 1963 cities were able to annex territory simply by annexing long sections of street rights of way to provide for remote areas to be considered as "contiguous" to existing boundaries. This type of annexation is what allowed Los Angeles to annex area to the Ocean, Oxnard to surround Port Hueneme, Ventura to annex to areas along streets to reach Highway 118, and many, many similar types of incorporation patterns around the state. The result of this practice was so-called "leap-frog" development, an urban pattern of growth and development at the fringes of cities that often by-passed older, existing developed areas and, in many instances, left areas of intervening agricultural lands surrounded or nearly surrounded by urban uses. Another result was that the provision of basic urban services became substantially more expensive as local taxpayers had to support the provision of utilities and services to developed areas that were sometimes miles away from existing facilities.

In establishing LAFCOs the legislatures recognized that the logical formation and determination of local agency boundaries is an important factor in promoting orderly

**COMMISSIONERS AND STAFF**

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<b>COUNTY:</b> Steve Bennett Kathy Long <i>Alternate:</i> Linda Parks	<b>CITY:</b> John Zaragoza Evaristo Barajas <i>Alternate:</i> Don Waunch	<b>SPECIAL DISTRICT:</b> Jack Curtis Dick Richardson <i>Alternate:</i> Ted Grandsen	<b>PUBLIC:</b> Louis Cunningham, Chair <i>Alternate:</i> Kenneth M. Hess
<b>EXECUTIVE OFFICER:</b> Everett Millais	<b>PLANNER III:</b> Hollie Brunsky	<b>CLERK:</b> Debbie Schubert	<b>LEGAL COUNSEL:</b> Noel Klebaum

development and in balancing that development with sometimes competing state interests of discouraging urban sprawl, preserving open-space and prime agricultural lands and efficiently extending government services. Over the years the legislature has continuously enhanced LAFCO's statutory authority to discourage sprawl, preserve open space and agricultural lands and provide for the efficient extension of government services. To this end, LAFCOs cannot, with limited exceptions, approve annexations to cities that would create new "islands" of unincorporated territory that are completely surrounded by incorporated areas. Still, however, there were "islands" of unincorporated, developed areas that existed from prior annexations, or in some cases, resulted from county approvals of development in previously undeveloped island areas. Often these developed island areas received some services from the adjacent city (ranging from no cost to extra surcharges on user fees). At minimum, to access these island areas required the use of city rights-of-way and caused confusion and inefficiencies for local service providers, especially public safety. Always, the residents in these island areas were disenfranchised from having a say in the affairs of the city that surrounds them.

To encourage and streamline the process for the annexation of developed island areas the legislature included provisions in the 1977 Municipal Organization and Reorganization Act (MORGA) providing for the County Board of Supervisors to initiate the annexation of island areas to cities if the island areas met all of the following criteria:

- Does not exceed 100 acres in area and such area constitutes the entire island;
- Is surrounded or substantially surrounded by the city to which annexation is proposed, by such city and a county boundary or the Pacific Ocean, or by a city and adjacent cities;
- Is substantially developed or developing;
- Is not prime agricultural land; and
- Will benefit from such annexation or is receiving benefits from the annexing city.

This law provided for notice, but LAFCO could not deny such annexations and the Board of Supervisors, serving as the conducting authority for protest purposes, could cause the annexations to occur without an election and in spite of any protests. Beginning in 1978 and continuing through the early 1980's the Ventura LAFCO and the County Board of Supervisors, utilized these and successor sections of the Government Code to annex approximately 67 separate island areas in Ventura County. Based on historical file information, by 1981 at least 697 qualifying island areas had been annexed to cities statewide. These expedited island annexation provisions in the Government Code expired or "sunsetting" on January 1, 1988.

Prior to the expiration of these expedited island annexation provisions, the majority of the developed island areas in Ventura County were annexed. Some larger island areas, and even a few smaller areas, were not included, however, especially in the cities of Ventura, Thousand Oaks and Simi Valley. Since the 1980s some of the larger developed island areas have been reduced in area based on other annexation actions and a few new, small island areas were created based on the exemptions allowed under the law.

### **Section 56375.3:**

In recognition that there are islands of unincorporated territory that still remain, and based on the long standing desire of the legislature to promote orderly boundaries and the efficient delivery of services, provisions were again added to the Government Code, effective January 1, 2000, that provide for the expedited annexation by cities of unincorporated islands that meet certain criteria. The majority of these provisions are now contained in Government Code Section 56375.3.

Section 56375.3 is attached and will be reviewed further as part of the Power Point presentation on this subject at the February 19, 2003 meeting. The major elements are:

- The requirement to waive protest proceedings if the annexation is initiated and considered in accordance with Section 56375.3. Thus, even if a majority of the property owners and/or registered voters within a qualifying island area protests the annexation, LAFCO must approve it.
- The requirement to waive protest proceedings expires or “sunsets” on December 31, 2006. After January 1, 2007 proceedings must follow standard protest requirements and are subject to termination or a possible election depending on the amount of protest.
- The annexation must be initiated by resolution of the affected city.
- The island area must be 75 acres or less and surrounded or substantially surrounded by the affected city (or the affected city and a county boundary or the affected city and the Pacific Ocean), and the area must constitute the entire island. Inherent in this requirement is that the island area be within the affected city’s sphere of influence.
- The area involved is substantially developed or developing.
- The area is not prime agricultural land
- The area will benefit from the annexation or is already receiving benefits from the annexing city.

### **Qualifying Island Areas In Ventura County:**

There are 24 separate island areas in Ventura County that qualify for annexation based on the requirements of Section 56375.3. Listed alphabetically by affected city, these areas are: (see attached vicinity maps)

#### **Camarillo**

- 1 area of approximately 35.62 acres containing 119, primarily residential, parcels located northerly of Las Posas Road along Lantana Street and Gardenia Avenue.

#### **Oxnard**

- 1 area of approximately 16.85 acres containing 1 parcel owned by the County of Ventura that is part of the Oxnard Airport runway.

### San Buenaventura

- 8 separate areas with a total of approximately 55.54 acres containing 254 parcels located in the Montalvo area north of U.S. 101 at Victoria Avenue primarily. This area is primarily residential but also has some commercial uses.

### Santa Paula

- 3 separate areas with a total of approximately 6.66 acres containing 34, primarily residential, parcels located southerly of Telegraph Road, westerly of Peck Road along or near Felkins Road and Lindsay Lane.

### Simi Valley

- 1 area of approximately 13.18 acres containing 15 residential parcels located along Vista Lago Drive.
- 2 separate areas with a total of approximately 49.49 acres containing 85 residential parcels located northerly of Avenida Simi and easterly of Anderson Drive and along or near Reservoir Drive.
- 2 separate areas with a total of approximately 54.51 acres containing 40 residential parcels located adjacent to Ditch Road or Country Lane.
- 1 area of approximately 39.8 acres containing 123 residential parcels located in the vicinity of Flood Street between Faxton Court and Felix Avenue.

### Thousand Oaks

- 5 separate areas with a total of approximately 39.8 acres containing 22 residential parcels located near Lynn Road and Kelly Lane.

Note that these are not the only island areas remaining in the County. They are, however, the only areas that staff has found to meet the requirements of Section 36375.3. The remaining island areas are either undeveloped, are prime agricultural land, are only partially developed and could be subdivided into 4 or more additional lots, or are greater than 75 acres in area. With the exception of the Lynn Ranch, Casa Conejo and Rolling Oaks island areas in Thousand Oaks and the Sinaloa Lake island area in Simi Valley, each of which is more than 75 acres in area, the island areas listed include all of the remaining developed or substantially developed island areas in the County.

### Process:

As noted, Section 56375.3 requires that island annexation proposals must be initiated by the affected city. This means that the affected city would need to take action to commence the process, including having appropriate maps and legal descriptions prepared, serving as lead agency for CEQA purposes and pre-zoning each island area (which requires consistency with the affected city's general plan). The pre-zoning requirement typically means that the affected city must provide both mailed and published notices at least two weeks prior to hearing before the city's Planning

Commission and again before City Council hearings. Some cities, however, may have local provisions for developed areas to automatically be designated with a city zone designation equivalent to the existing County zone designation. In those instances, once the CEQA process is complete the initiation of an island annexation could proceed directly to the city council of the affected city for hearing.

In addition to the CEQA process, and state planning law and local city regulations for notices and hearings for pre-zoning actions, Government Code Section 56755 requires that resolutions by city councils initiating island annexations be adopted at a public hearing that is preceded by a 21 day published notice.

Once a city council holds the public hearing and adopts resolution initiating an island annexation pursuant to Section 56375.3 a complete application must be filed with LAFCO. Current LAFCO filing requirements provide for copies of the record of the city's actions (including resolutions relating to zoning and the initiation of the annexation, CEQA documents, etc.), maps and legal descriptions, and filing fees to be submitted before an application can be deemed complete.

Upon receipt of a completed application, LAFCO must hold a public hearing on the matter, even though there is no ability for LAFCO to deny the proposal. Prior to this hearing there must be a 21-day advance published notice and mailed notice to all property owners and registered voters within the island area and all property owners and registered voters within 300 feet of the island area. Since no one receiving these notices really has any standing to protest, and since the Commission cannot deny the application, this broad notice requirement for LAFCO is only to ensure that the general public knows what is occurring.

After approval by LAFCO and the end of any posting period necessary for CEQA purposes (typically 30 days), the annexation would be recorded and the island area would become part of the affected city at that time. Concurrent with the recording a filing would also be made with the State Board of Equalization and the appropriate filing fees paid to the state. Only at this point is the LAFCO process truly complete.

Subsequent to the completion of LAFCO proceedings, however, work is still necessary by the Assessor to update tax rates area and parcel map information and by the County Surveyor to update the official LAFCO maps and records including the geographic information system files. Both the Assessor and the County Surveyor charge separate fees for this work. These fees are typically collected when an application is filed with LAFCO.

### **Policy Considerations:**

The Commission has previously indicated to staff that it wanted to take a proactive approach to encouraging island annexations. As background to this presentation and

possible policy considerations by the Commission I requested that LAFCO legal counsel review 3 specific questions, as follows:

- Can an affected city combine one or more qualifying island areas that individually and collectively meet the criteria in Section 56375.3 into a single proposal for LAFCO action?
- Can LAFCO waive its fees and pay related state and local fees for island annexations pursuant to Section 56375.3?
- Can LAFCO condition an unrelated annexation or reorganization proposal from an affected city to not be completed until and unless the affected city initiates the annexation of qualifying island areas pursuant to Section 56375.3?

The Memorandum from LAFCO legal counsel responding to these questions is attached. Basically the answer to each question is “yes.”

The ability of an affected city to combine multiple unincorporated islands that individually and collectively meet the requirements of Section 56375.3 into a single proceeding is more efficient and cost effective for the city and for LAFCO. Thus, rather than 24 separate applications for each separate qualifying island area, there would need to be only 9 applications total from the affected cities (once for each “bullet point” listed for each affected city, as depicted on the attached vicinity maps) and 9 hearing held by LAFCO.

The questions about fee waivers and payment of related state and local fees for qualifying island annexations, and about conditioning unrelated proposals, are both policy considerations for Commission discussion and possible action.

#### Fee Waiver & Payment of Costs:

The annexation process is increasingly expensive due to a variety of costs and fees. Usually the real party in interest for an annexation or reorganization proceeding, typically a developer or property owner, pays these costs and fees. For qualifying island areas, however, the affected cities do not have the ability to pass through these costs and fees. In addition to costs for the staff time of the affected city and the costs relating to the CEQA process, other costs and fees per proposal, based on current fee schedules, include:

Map & legal description preparation	\$500	to	\$5,000
LAFCO application fees		+/-	5,400.00
County Assessor fees	500	to	2,400
State Board of Equalization fees	500	to	1,500
County Surveyor fees	600	to	1,140
Total	\$7,500	to	\$15,440

As an inducement for affected cities to initiate island annexations pursuant to Section 56375.3, the Commission could consider waiving its application fee and, as a matter of

public interest, pay for one or more of the related costs and fees. If LAFCO were to consider covering all of the above listed costs for qualifying island annexations, and assuming 9 applications at an average cost of \$11,470, the total cost to LAFCO would be \$103,230. **If the Commission determines that it wants to consider waiving the LAFCO application fee and/or to pay for any or all of the related costs shown above, it is recommended that staff be directed to bring this matter back for consideration as a part of action on the proposed FY 2003-04 budget in April and as a part of action on the Fee Schedule review that occurs during the budget review process between April and June.**

Requiring Island Annexation as a Condition of Other Annexations:

Sometimes an affected city may not want to initiate annexations of qualifying island areas. Reasons include the processing fees and costs and related staff time, but may also include actual or unstated policies not to annex any property without the owners consent or, in some instances, because the affected city believes that the future costs of providing services to the island area outweigh the revenues the island area generates for the city. Objections to annexation by owners and/or residents in affected island areas usually relate to the area's history, preconceived animosity toward the affected city, concerns about zoning restrictions and/or usually unfounded concerns that taxes will go up.

To overcome possible lack of willingness to take action by affected cities, another policy the Commission may want to consider is conditioning unrelated proposals for annexation or reorganization filed by an affected city to not be completed until and unless the affected city initiates island annexation proceedings consistent with Section 56375.3 and makes a complete filing with LAFCO. This is similar to the condition placed on the Oxnard River Park proposal last year concerning the annexation of the Old El Rio island area. It would be best, however, to have an overall policy about this type of condition and not to apply it on an ad hoc basis. **If the Commission desires to consider such a policy for all qualifying island areas and for each affected city, it is recommended that staff be directed to prepare an amendment to the Commissioner's Handbook detailing the Commission's policy for action at the April 16, 2003 meeting.**

**CALIFORNIA GOVERNMENT CODE SECTION 56375.3**

**Annexation of Unincorporated Islands by Cities**

**As of January 1, 2003**

**56375.3.** (a) In addition to those powers enumerated in Section 56375, a commission shall do either of the following:

(1) Approve, after notice and hearing, the annexation to a city, and waive protest proceedings pursuant to Part 4 (commencing with Section 57000) entirely, if all of the following are true:

(A) The annexation is initiated on or after January 1, 2000, and before January 1, 2007.

(B) The annexation is proposed by resolution adopted by the affected city.

(C) The commission finds that the territory contained in the annexation proposal meets all of the requirements set forth in subdivision (b).

(2) Approve, after notice and hearing, the annexation to a city, subject to subdivision (a) of Section 57080, if all of the following are true:

(A) The annexation is initiated on or after January 1, 2007.

(B) The annexation is proposed by resolution adopted by the affected city.

(C) The commission finds that the territory contained in the annexation proposal meets all of the requirements set forth in subdivision (b).

(b) Subdivision (a) applies to territory that meets all of the following requirements:

(1) It does not exceed 75 acres in area, that area constitutes the entire island, and that island does not constitute a part of an unincorporated area that is more than 100 acres in area.

(2) The territory constitutes an entire unincorporated island located within the limits of a city, or constitutes a reorganization containing a number of individual unincorporated islands.

(3) It is surrounded in either of the following ways:

(A) Surrounded, or substantially surrounded, by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean.

(B) Surrounded by the city to which annexation is proposed and adjacent cities.

(C) This subdivision shall not be construed to apply to any unincorporated island within a city that is a gated community where services are currently provided by a community services district.

(D) Notwithstanding any other provision of law, at the option of either the city or the county, a separate property tax transfer agreement may be agreed to between a city and a county pursuant to Section 99 of the Revenue and Taxation Code regarding an annexation subject to this subdivision without affecting any existing master tax sharing agreement between the city and county.

(4) It is substantially developed or developing. The finding required by this subparagraph shall be based upon one or more factors, including, but not limited to, any of the following factors:

(A) The availability of public utility services.

(B) The presence of public improvements.

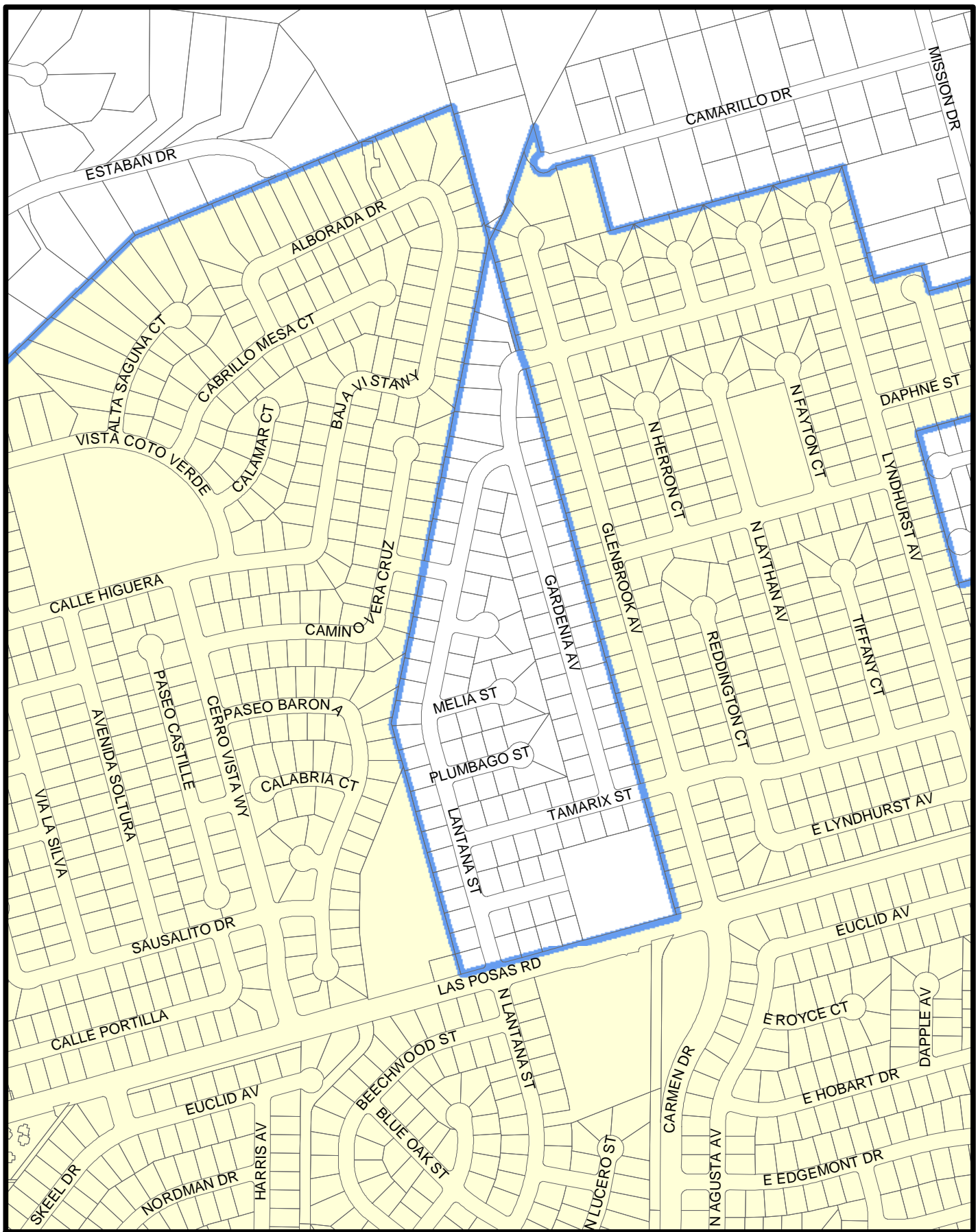


**CALIFORNIA GOVERNMENT CODE SECTION 56375.3**

**Annexation of Unincorporated Islands by Cities**

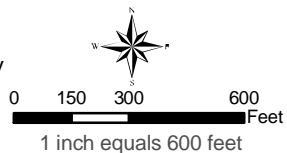
**As of January 1, 2003**

- (C) The presence of physical improvements upon the parcel or parcels within the area.
  - (5) It is not prime agricultural land, as defined by Section 56064.
  - (6) It will benefit from the annexation or is receiving benefits from the annexing city.
- (c) Notwithstanding any other provision of this subdivision, this subdivision shall not apply to all or any part of that portion of the development project area referenced in subdivision (e) of Section 33492.41 of the Health and Safety Code that as of January 1, 2000, meets all of the following requirements:
- (1) Is unincorporated territory.
  - (2) Contains at least 100 acres.
  - (3) Is surrounded or substantially surrounded by incorporated territory.
  - (4) Contains at least 100 acres zoned for commercial or industrial uses or is designated on the applicable county general plan for commercial or industrial uses.



## Legend

- City Boundary
- parcel

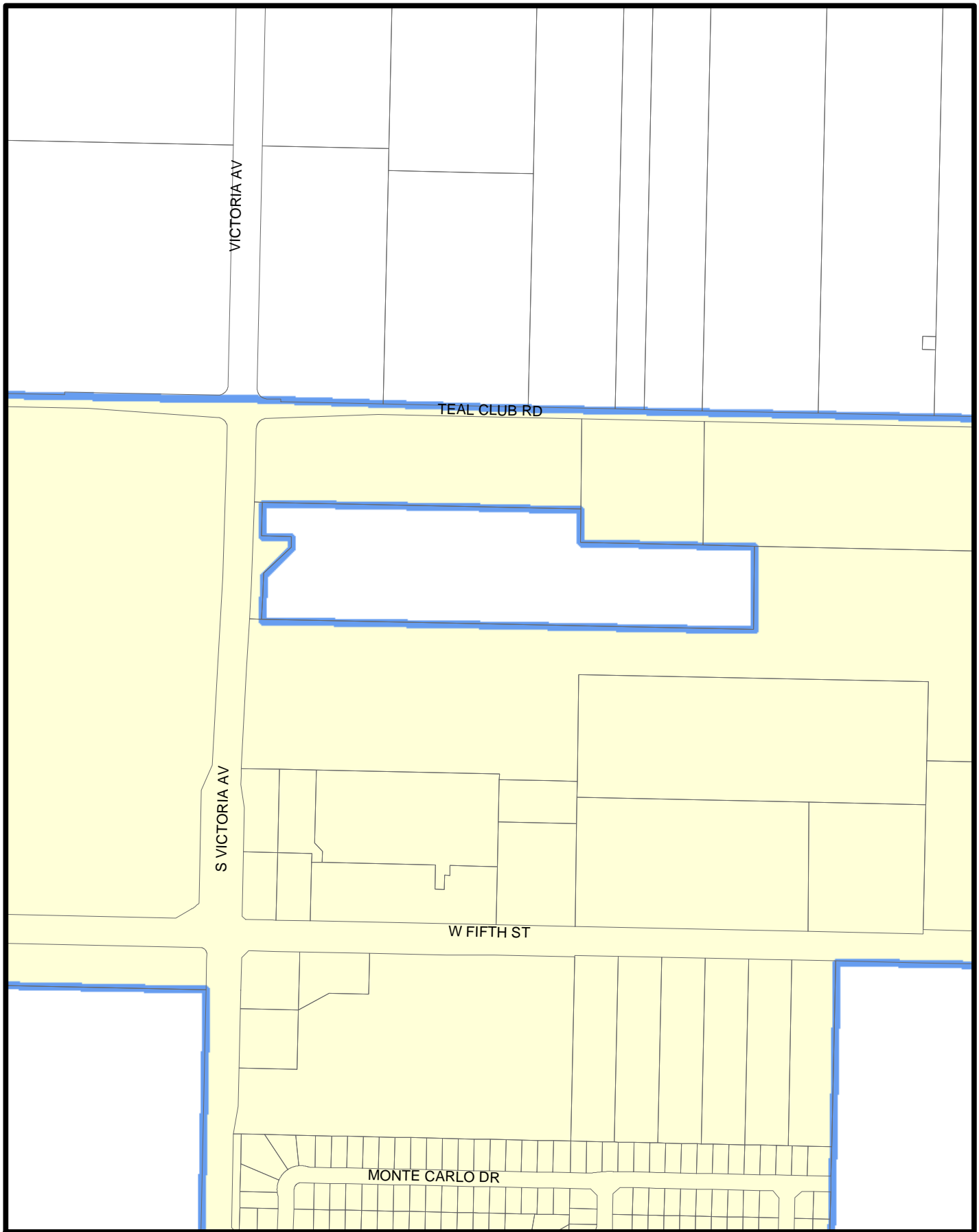


## Ventura LAFCO City of Camarillo Gardenia / Lantana Island

119 Parcels  
Approx. 35.62 Acres (Including Streets)

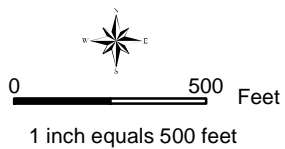
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## Legend

- City Boundary
- parcel

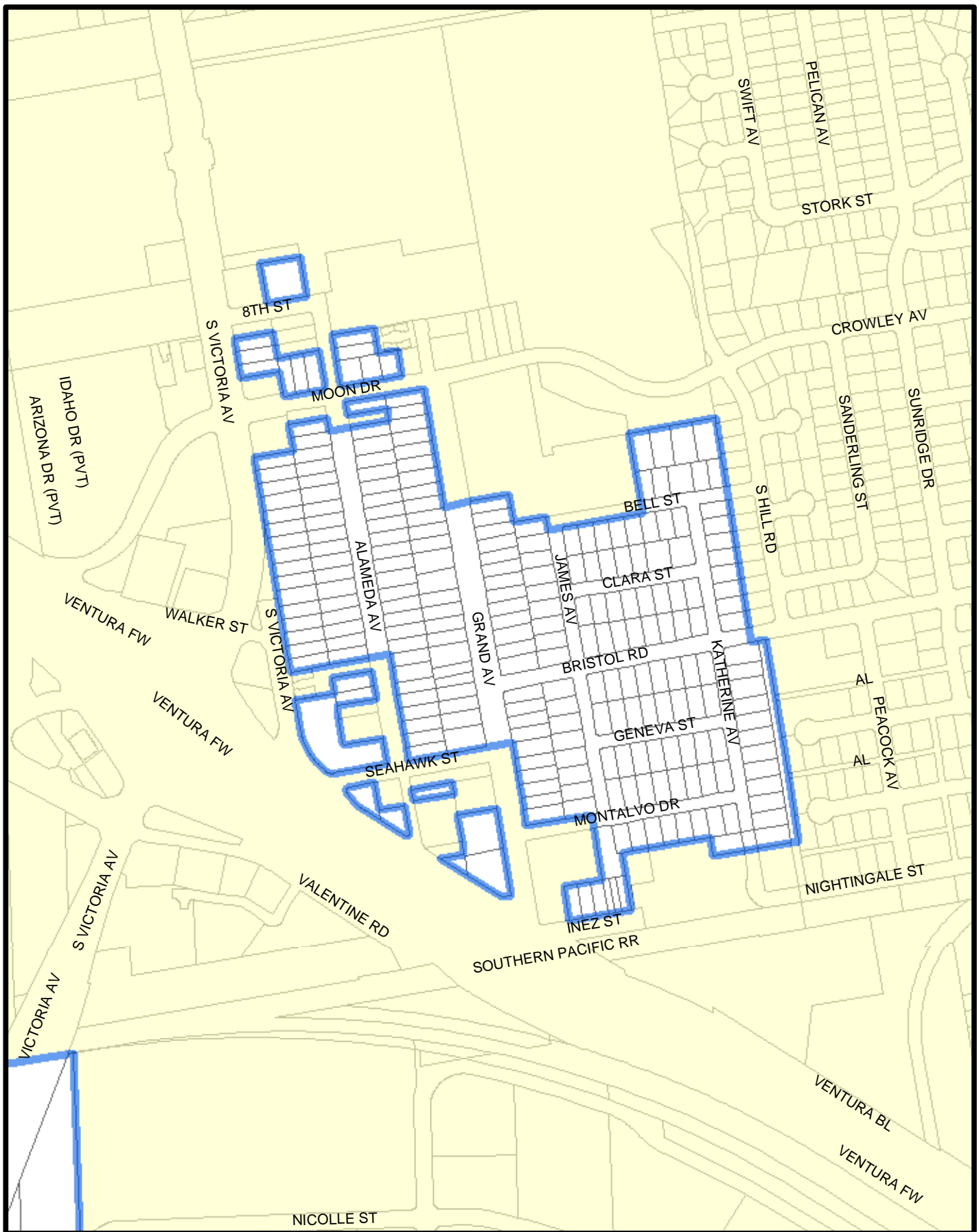


**Ventura LAFCO**  
**City of Oxnard**  
**Oxnard Airport Island**

1 Parcels  
Approx 16.85 Acres

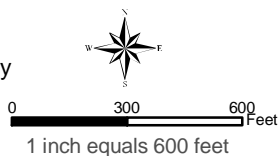
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## Legend

- City Boundary
- parcel

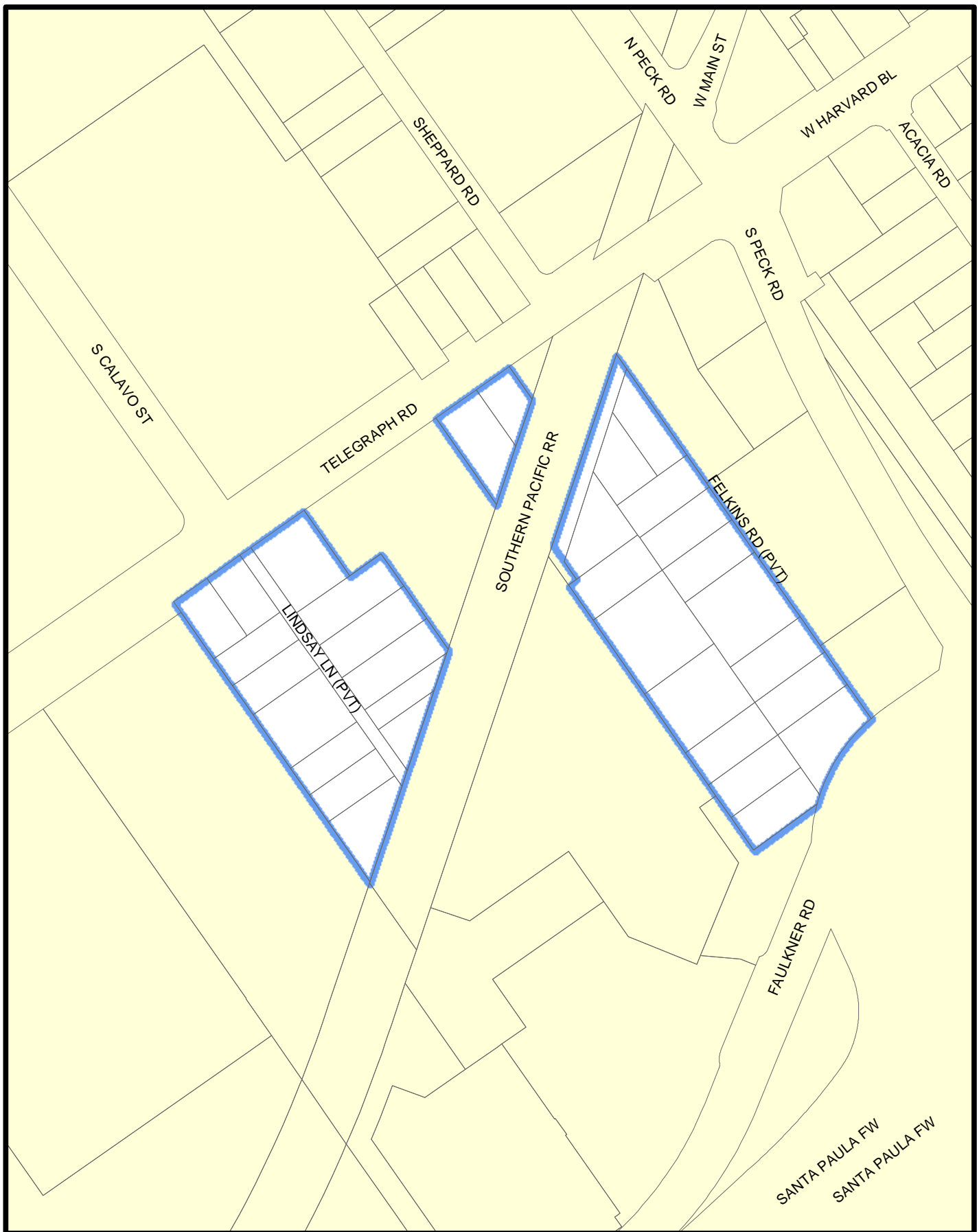


## Ventura LAFCO City of San Buenaventura Montalvo Islands (8 Seperate Areas)

254 Parcels  
Approx. 55.54 Acres

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## Legend

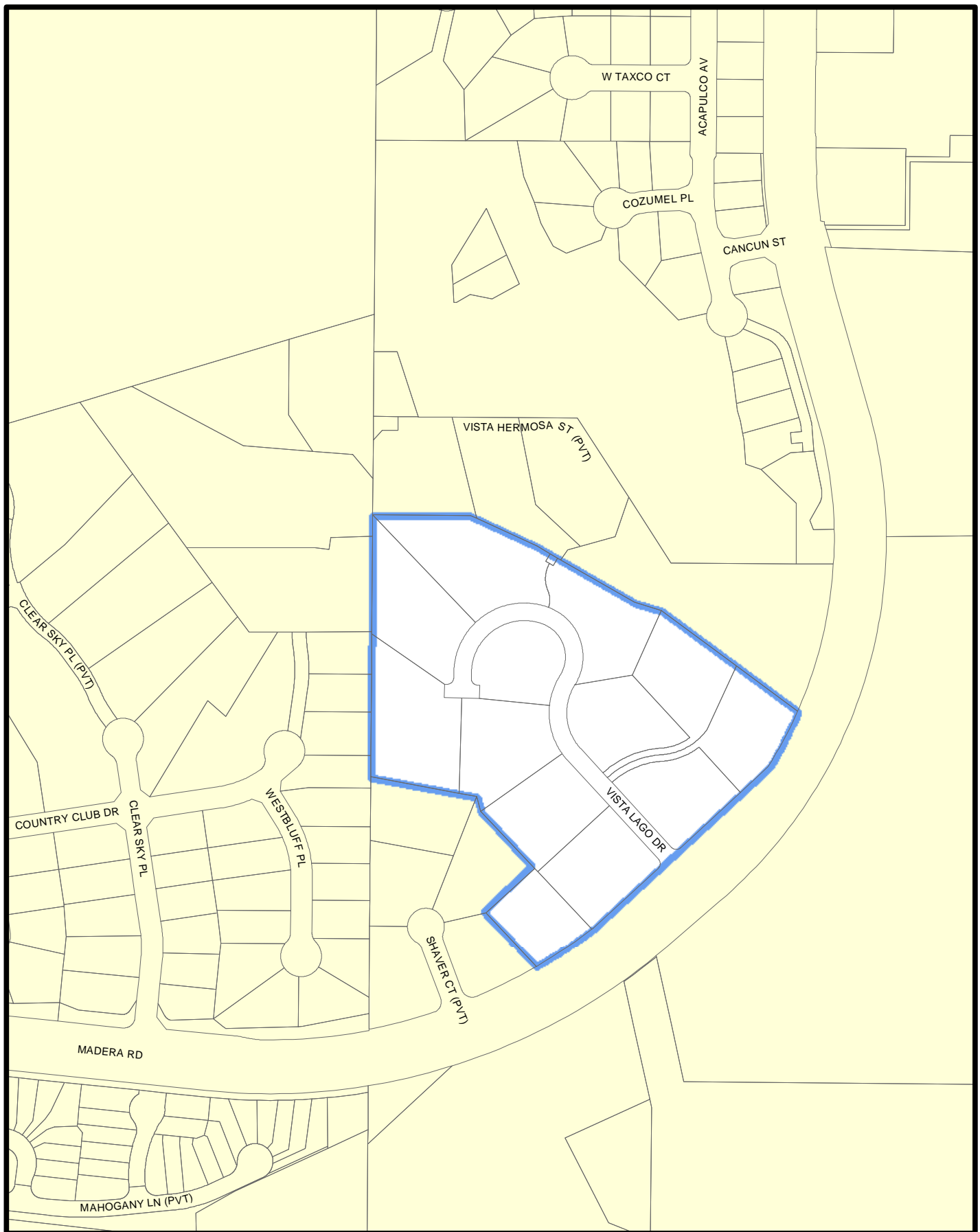
- City Boundary
  - parcel
- 0 100 Feet  
1 inch equals 200 feet

**Ventura LAFCO**  
**City of Santa Paula**  
**Lindsay / Felkins Islands**  
**( 3 Separate Islands )**

34 Parcels Total  
 Approx. 6.66 Acres ( Including Streets )

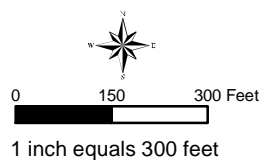
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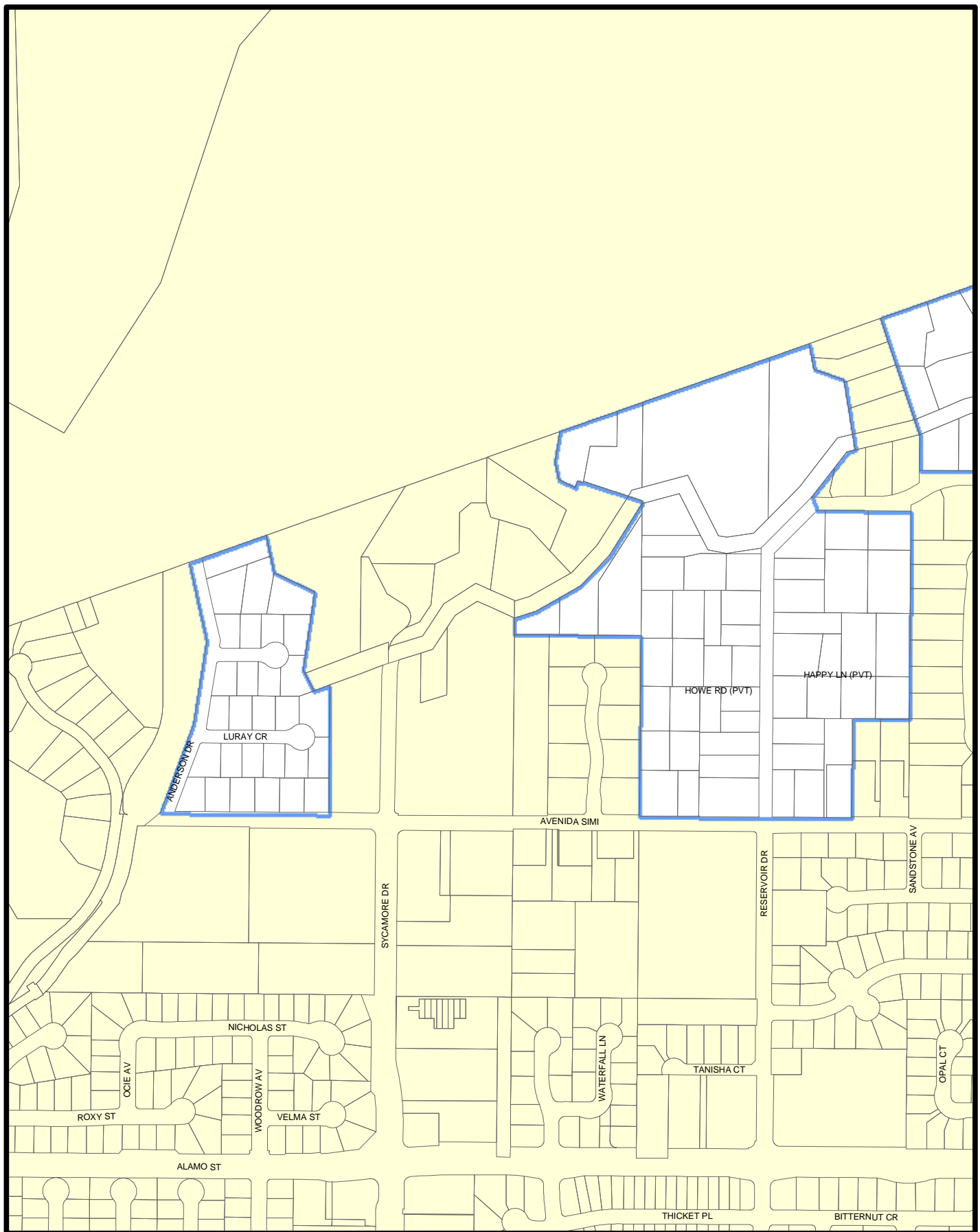
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- parcel



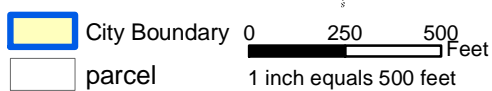
**Ventura LAFCO**  
**City of Simi Valley**  
**Vista Lago Island**  
 15 Parcels Total  
 Approx. 13.18 Acres ( Including Streets )

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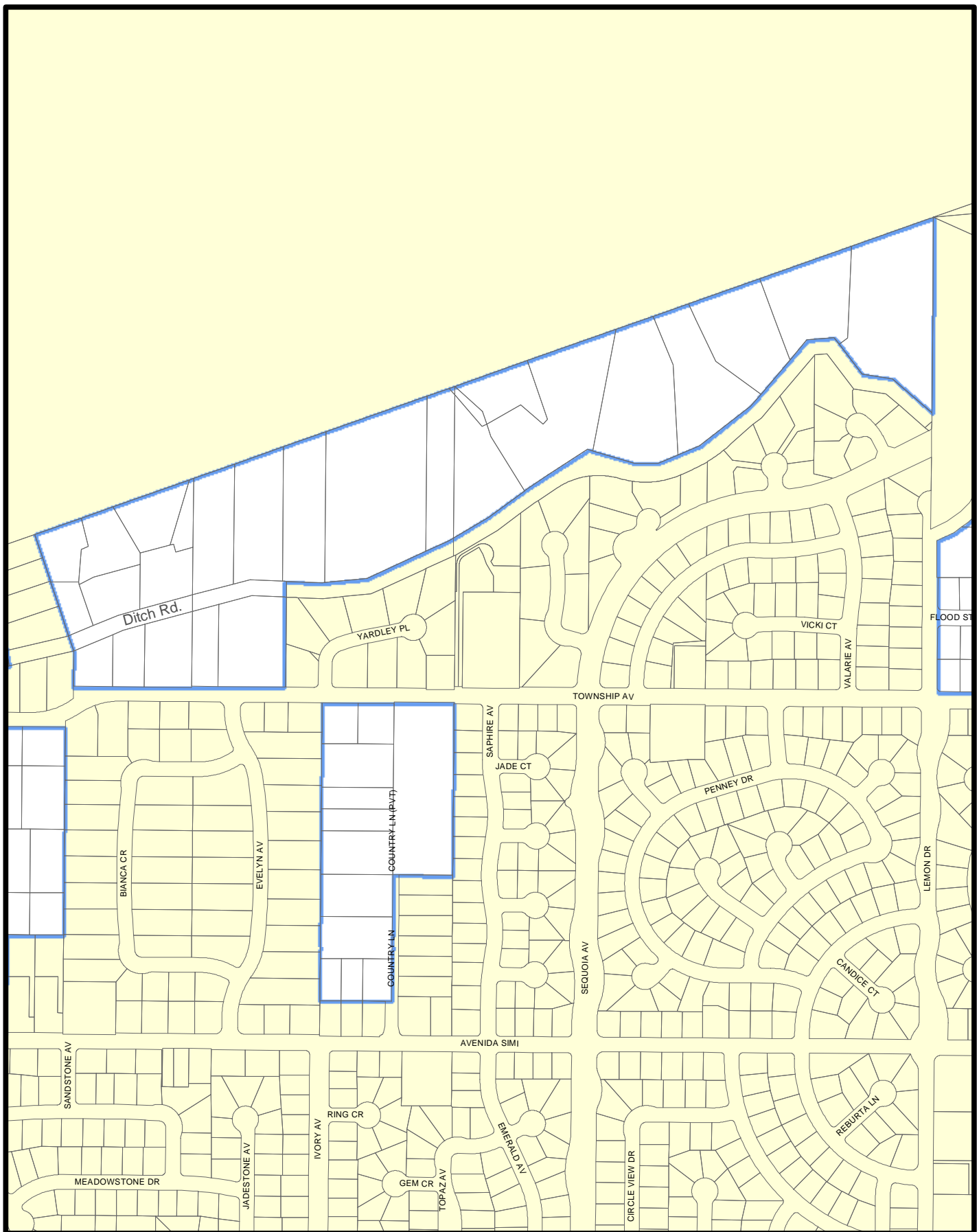
**Ventura LAFCO**  
**City of Simi Valley**  
**Anderson / Reservoir Islands**  
**( 2 Separate Areas )**

85 Parcels Total  
 Approx. 49.49 Acres ( Including Streets )

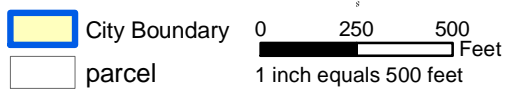
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## Legend

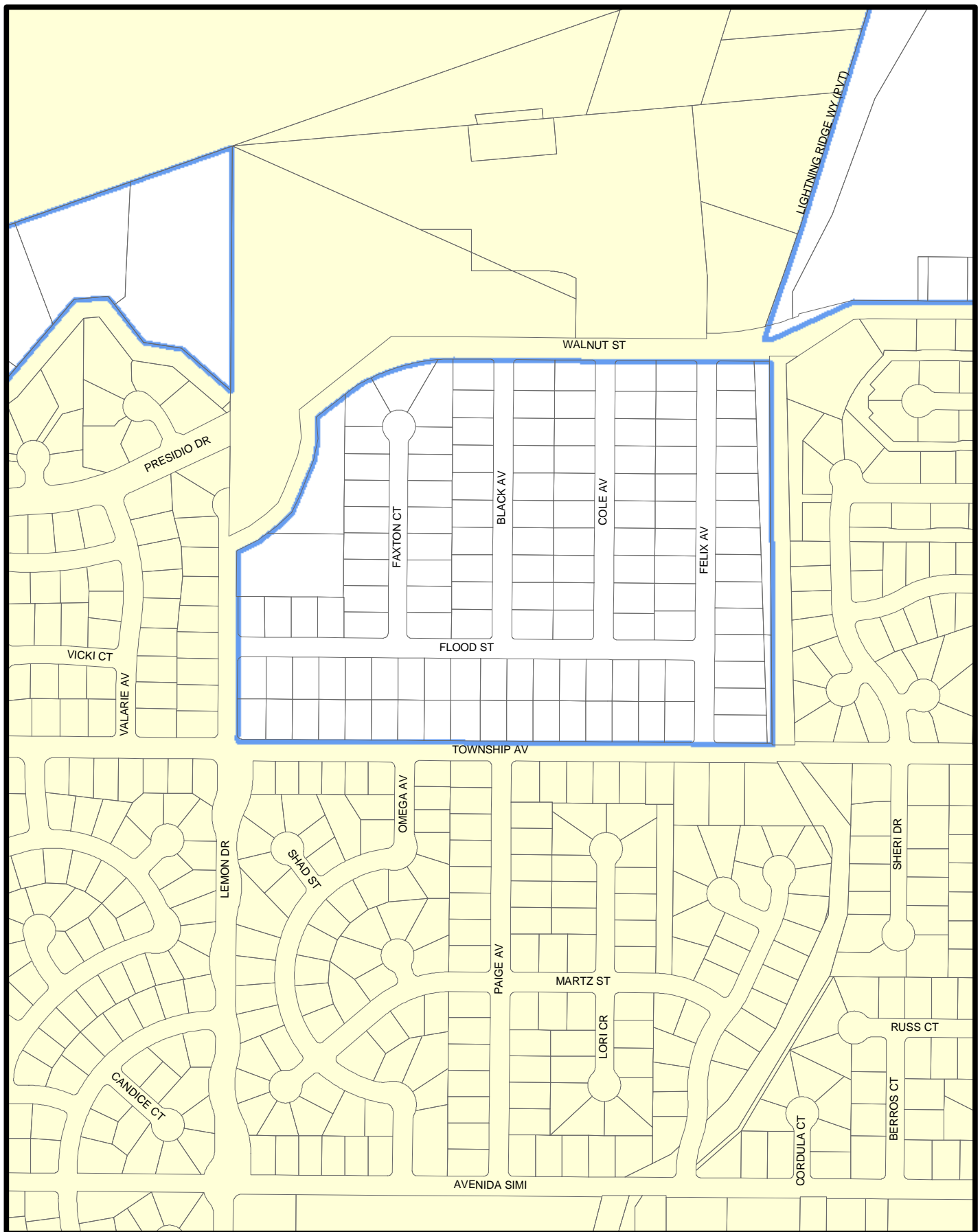


**Ventura LAFCO**  
**City of Simi Valley**  
**Ditch Rd. / Country Lane Islands**  
**( 2 Separate Areas )**  
 40 Parcels Total  
 Approx. 54.51 Acres ( Including Streets )

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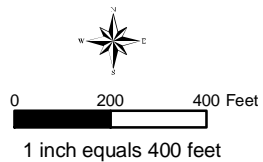
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## Legend

- City Boundary
- parcel

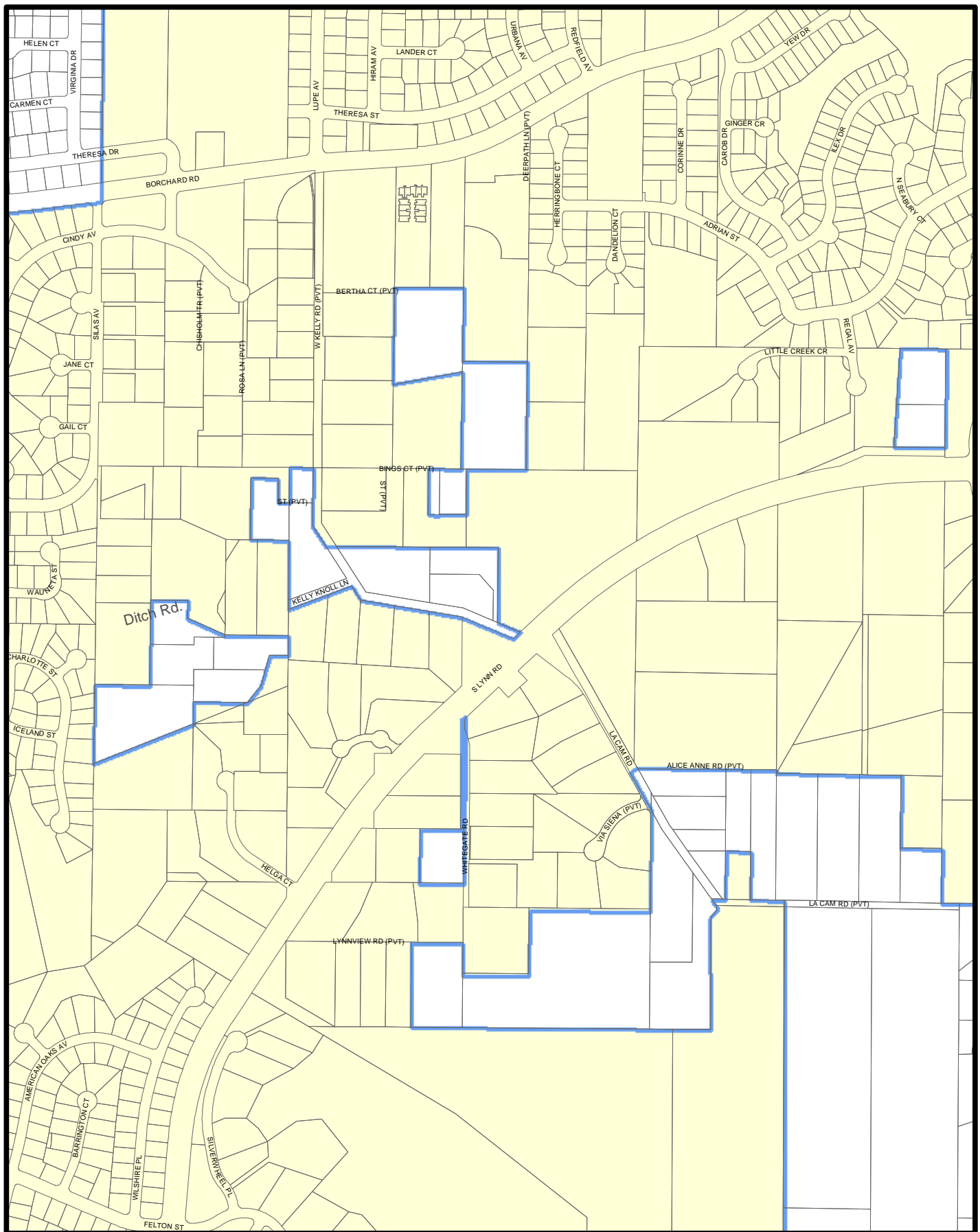


## Ventura LAFCO City of Simi Valley Flood Street Island

123 Parcels Total  
Approx. 39.80 Acres ( Including Streets )

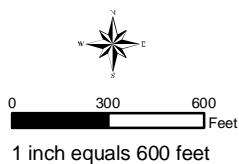
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## Legend

- City Boundary
- parcel



**Ventura LAFCO**  
**City of Thousand Oaks**  
**Lynn / Kelly / Whitegate Area Islands**  
**( 5 Separate Areas )**  
 22 Parcels Total  
 Approx. 25.70 Acres ( Including Streets )

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**MEMORANDUM  
COUNTY OF VENTURA  
COUNTY COUNSEL'S OFFICE**

January 31, 2003

TO: Everett Millais, Executive Officer  
Ventura Local Agency Formation Commission

FROM: Noel A. Klebaum, Chief Assistant County Counsel

RE: ISLAND ANNEXATIONS TO CITIES

You have posed three questions about island annexations. They are:

1. Can multiple unincorporated islands surrounded by a single city, which individually *and collectively* meet the criteria in Government Code section 56375.3<sup>1</sup> for waiver of protest proceedings, be combined in one annexation proceeding and still be eligible for the protest waiver?
2. Is the Local Agency Formation Commission (LAFCO) authorized to waive its fees to encourage island annexations, and may it pay associated State and local fees for the annexing city?
3. Is LAFCO authorized to condition the approval of a city's change of organization or reorganization proceeding on the initiation by the city of a proposal for island annexations even though the approval is not directly related to the island annexations?

**SHORT ANSWERS**

Multiple islands may be combined in one reorganization proceeding without the loss of eligibility for the protest waiver so long as they collectively meet the criteria of section 56375.3.

LAFCO is authorized to waive all fees which are charged for the processing of proposals. There is neither express authorization nor prohibition against LAFCO's payment of State and local fees for an applicant, with the exception of the constitutional prohibition against a gift of public funds. If the Commission were to determine it is in the public interest to pay such fees to complete island annexations, the payments would probably not violate the constitutional prohibition.

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<sup>1</sup> All section citations are to the Government Code unless otherwise stated.

LAFCO is authorized to condition the approval of a city's change of organization or reorganization on the initiation of proceedings for island annexations not directly related to the proceeding in which the condition is imposed.

## ANALYSIS

### **Combining Island Annexations in One Reorganization**

\_\_\_\_\_ You have stated it would be cost-effective and efficient, and would further the Legislature's goal to eliminate unincorporated islands within cities, if LAFCO could combine multiple island annexations in one proceeding under section 56375.3. That section states, in pertinent part:

"(a) [A] commission shall . . . :

"(1) Approve, after notice and hearing, the annexation to a city, and waive protest proceedings pursuant to Part 4 (commencing with Section 57000) entirely, if all of the following are true: [¶] . . . [¶] (B) The annexation is proposed by resolution adopted by the affected city.

"(C) The commission finds that the territory contained in the annexation proposal meets all of the requirements set forth in subdivision (b). [¶] . . . [¶] (b) Subdivision (a) applies to territory that meets all of the following requirements:

"(1) It does not exceed 75 acres in area, that area constitutes the entire island, and that island does not constitute a part of an unincorporated area that is more than 100 acres in area.

"(2) The territory constitutes an entire unincorporated island located within the limits of a city, *or constitutes a reorganization containing a number of individual unincorporated islands.*" (Italics added.)

The plain meaning of the italicized language in subdivision (b)(2), above, authorizes the combining of islands in a single proposal so long as they collectively meet the other requirements of section 56375.3. There is no apparent basis for a successful attack on this provision, so we therefore believe LAFCO is authorized to proceed as you have proposed.

Special island annexation provisions have existed in the Government Code for decades, but the italicized language was first adopted by the Legislature as part of the Hertzberg-sponsored overhaul of the Cortese-Knox Act in 2000. It has not yet been tested in the appellate courts, and there is, therefore, no judicial guidance regarding the possible outcome of challenges. Attacks on annexations under previous versions of the island annexation law have, however, been unsuccessful. In *Scuri v. Board of Supervisors* (1982) 134 Cal.App.3d 400, *I.S.L.E. v. County of Santa Clara* (1983) 147 Cal.App.3d 72, and *Fig Garden Park No. 2 Assn. v.*

*Local Agency Formation Com.* (1984) 162 Cal.App.3d 336, annexations of multiple islands, which individually were within but collectively exceeded the statutory acreage limit, were conducted at the same time but in separate proceedings with separate resolutions. The annexations were individually approved and protests were waived. The petitioners claimed, however, the individual annexations were really collective reorganizations which had been segmented to avoid protests and elections. All three appellate courts rejected those arguments and upheld the annexations under the island provisions.

Although these cases were resolved on significantly different facts and without the benefit of the new statutory language, they provide the comforting knowledge that in similar situations the courts accorded great weight to the Legislature's desire to eliminate islands and looked to the substance and purpose of the proceeding rather than the manner and form in which it was conducted.

### **Fee Waivers and Payments**

\_\_\_\_\_ LAFCO's general authority to waive its fees is found in subdivision (d) of section 56383 which states: "The commission may waive a fee if it finds that payment would be detrimental to the public interest." That general authority is, however limited by subdivision (f) of section 56383 which states: "Waiver of fees is limited to those costs incurred by the commission in the processing of a proposal." This limitation requires further explication of the fee statute to understand what fees LAFCO can and cannot waive.

Section 56383 authorizes LAFCO to establish a schedule of fees for the costs of "proceedings taken" under the Cortese-Knox-Hertzberg Act, including sphere amendments, filing and processing of all applications of any kind, requests for reconsideration, and virtually anything else LAFCO does. Fee waivers, however, are limited to the "processing of proposals." A proposal is defined in section 56069 as:

"[A] request or statement of intention made by petition or by resolution of application of a legislative body or of a school district proposing proceedings for the change of organization or reorganization described in the request or statement of intention."

It appears, therefore, that LAFCO cannot waive its fees for anything other than a proceeding for a change of organization or reorganization initiated by petition or by resolution of application of a legislative body or school district.

Because island annexations are changes of organization or reorganizations, LAFCO is authorized to waive its fees for such proceedings. It must, however, find that payment of the fees "would be detrimental to the public interest." (§ 56383, subd. (d).)

The payment by LAFCO of related State and local fees for the applicant would require that the Commission make the finding that it is in the public interest that LAFCO pay the fees. Such a finding is necessary to avoid the constitutional prohibition against a gift of public funds. Article XVI, section 6 of the California Constitution prohibits the State and all of its subdivisions, including LAFCO, from ". . . making . . . any gift, of any public money . . . to any individual, municipal or other corporation whatever; . . ." Payment of a fee for a city would come within this prohibition unless LAFCO finds, based upon facts presented to it, that it is in the public interest, and in furtherance of LAFCO's purpose, for LAFCO to make the payment. The California Supreme Court has stated this rule as follows:

"[A] contribution from one public agency to another for a purely local purpose of the donee agency is in violation of the constitutional prohibition, but . . . such a contribution is legal if it serves the public purpose of the donor agency even though it is beneficial to local purposes of the donee agency.' [Citation.]" (*Golden Gate Bridge etc. Dist. v. Luehring* (1970) 4 Cal.App.3d 204, 208.)

You have briefly explained in your memorandum of January 10, 2003, the public interest in LAFCO payment of the fees for the cities that agree to apply for island annexations. I believe a thorough explanation of those interests would support a finding by the Commission that payment by LAFCO is justified. An individualized finding would be necessary for each reorganization proposal.

### **Conditioning Completion of Other Proceedings on the Initiation of Island Annexations**

\_\_\_\_\_ The Legislature has given LAFCO the broad power to condition the completion of any change of organization or reorganization on the initiation, conduct or completion of another proposal. Section 56886 establishes this power as follows:

"Any change of organization or reorganization may provide for, or be made subject to one or more of, the following terms and conditions. . . . [¶] . . . [¶] (o) The initiation, conduct, or completion of proceedings on a proposal made under, and pursuant to, this division."

The logic underlying this power is obvious. LAFCO is responsible for the establishment and maintenance of logical, orderly boundaries for all of the local agencies within its jurisdiction. The ability to cause those agencies to initiate proceedings which further LAFCO's mandate is an essential tool for the work LAFCO must do to meet its responsibility.

Your question indicates a concern that LAFCO may have to show a close nexus between the proceeding it conditions and the proceeding it requires be initiated. That is not the case. Neither the Cortese-Knox-Hertzberg Act nor any other enactment requires such a nexus. The only nexus necessary is that the applicant have the authority to initiate the new proceeding, and that it further LAFCO's mandate to establish and maintain orderly boundaries for the affected agency.

Perhaps underlying your concern are those land use cases which require the showing of a nexus between a land use applicant's permit application to a local government, and the concessions the local government seeks to exact in exchange for granting the permit. (See, e.g., *Nollan v. California Coastal Com'n* (1987) 483 U.S. 825 [107 S.Ct. 3141, 97 L.Ed.2d 677]; *Dolan v. City of Tigard* (1994) 512 U.S. 374 [114 S.Ct. 2309, 129 L.Ed.2d 304].) That body of law generally does not apply to LAFCO's proceedings because applicants to LAFCO are not seeking land use entitlements which directly benefit land they own; rather, they are seeking a legislative determination that a local agency's boundary should be changed. The constitutional protections accorded property rights usually are not at stake. The nature of boundary change proceedings was explained in *Weber v. City Council* (1973) 9 Cal.3d 950, 957:

"Municipal corporations are political subdivisions of the state. Subject only to its own laws and constitution, the state may create, expand, diminish, or abolish such subdivisions, and "all this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest." [Citations.]' The annexation of territory to cities is a matter of general state importance under control of the Legislature. [Citations.]"

LAFCO is not exacting any right or property from a city when it requires the city to apply to adjust its boundary in one respect in order to obtain the right to adjust it in another. LAFCO may, therefore, condition any change of organization or reorganization for a city on the initiation, conduct or completion of island annexations for the same city.

NAK:csb